

**FINAL STATEMENT OF REASONS  
FOR  
PROPOSED BUILDING STANDARDS  
OF THE  
OFFICE OF STATEWIDE HEALTH PLANNING & DEVELOPMENT**

**REGARDING THE CALIFORNIA BUILDING STANDARDS ADMINISTRATIVE CODE  
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 1**

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a final statement of reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

**UPDATES TO THE INITIAL STATEMENT OF REASONS:**

The Initial Statement of Reasons has been updated, as follows:

**STATEMENT OF SPECIFIC PURPOSE AND RATIONALE:**

**Part 1, Chapter 6**

**Section 1.4.5.1.2** is being amended to correct a technical error in the current regulations. A building from which all acute care services have been removed may still be considered a hospital building, but would not be subject to the seismic retrofit provisions of SB 1953. The applicable requirements and authority having jurisdiction will vary, depending on the new use of the building.

**Section 1.5.2** is being amended to make the requirements consistent with existing statute Health and Safety Code 130063.

**Part 1, Chapter 7**

**Section 7-113** is being reformatted for clarity.

**Section 7-115** is being reformatted for clarity, and amended to clearly define the roles of architects and engineers in general responsible charge of health facility construction projects, and for architects and engineers responsible for preparing plans for health facility construction projects.

**Section 7-133** is being amended to make specific the statutory requirements of Health and Safety Code Section 129785 regarding fees paid to the Office for plan review and field observation of health facility construction projects. An applicant health facility pays the Office a fee for these services which is based on a percentage of the estimated construction cost at the time of project submittal. The amendments make clear that the applicant may be responsible for paying additional fees to the Office, if upon completion of a project, the actual construction costs exceed 5% of the estimated construction cost by which the original fee payment was computed. The amendments also clarify that the "minimum filing fee" of \$250 for a project is nonrefundable and will be included in the calculation of the total fee paid for OSHPD's services.

**Section 7-134** makes specific the statutory requirements of Health and Safety Code Section 129785. Statute requires that OSHPD adopt regulations that specify various circumstances under which a fee refund would be applicable. Currently, OSHPD charges a fee for plan review and field observation services for a

health facility construction project. The current fee for hospital construction project is 1.64% of the estimated construction cost and for skilled nursing facilities it is 1.5% of the project's estimated construction cost. The applicant health facility provides the estimated cost amount on the project submittal application. The Office will invoice the applicant for the project fee amount based on that cost estimate. Section 7-134 will provide requirements regarding circumstances under which a refund of all or a portion of fees submitted to OSHPD may be issued to the applicant. Specifically:

**Section 7-134 (a)** provides procedural requirements regarding refund requests and identify circumstances under which the Office will not issue a refund.

**Section 7-134 (b)** makes specific the requirements of Health and Safety Code Section 129785. This statute requires that a fee refund will be issued to the applicant when the estimated construction cost of a project exceeds the actual construction cost by more than 5%. The applicant would receive a refund of the excess portion of fees paid which would be based on the applicable hospital or skilled nursing facility fee schedule (as specified in Section 7-133) and calculated on the amount the estimated cost exceeds the actual construction cost. This refund requirement would apply to completed construction projects. Statute also provides an exception to this refund situation. It requires that in order for an applicant to receive a fee refund health facility project, construction of at least 75% of the square footage for must be complete. Additionally a refund will not be issued if the scope of the originally approved construction project is reduced by 25% or more.

**Section 7-134(c)** makes specific the requirements of Health and Safety Code Section 129785. This statute requires that the Office, identify in regulation, "other" circumstances when the Office will issue a refund for fees paid. The circumstances outlined in section 7-134(c) apply to refunds for projects cancelled or withdrawn by the applicant. When construction plans and specifications are submitted to the Office they are reviewed by architects and engineers for approval and building permit. Upon commencement of construction the field staff provide review and observation of the facility construction. The plan review services equate to approximately 70% of the full services provided by the Office for a project, with approximately 30% of the services being field construction related. The Office used these percentages to determine the percentage of fee that may be refunded for projects that are withdrawn before completion. The \$250 minimum filing fee, as established in Section 7-133(a)(3), is nonrefundable.

**Section 7-144 (b)** is being added to clarify that when a lead inspector is identified for a construction project, the lead inspector must be certified in a class appropriate for the scope of the project.

**Section 7-144 (c)** is being added for clarification. The amendments make reference to other sections of Title 24, Part 1, California Building Standards Administrative Code which are related to hospital construction "inspection" but are located in another "article" of Part 1. These referenced sections provide requirements for approval of a hospital inspector for a project and inspector's performance on a project.

**Sections 7-161, 7-163, 7-165 and 7-171** are being amended to specify that the timeframes for the progressive steps in appeals to the Hospital Building Safety Board will be calculated in "business" days rather than "days". Using "business" days eliminates the weekend days which are typically nonworking days. Additionally, the number of days for some procedural steps are being increased to ensure that the HBSB staff, HBSB members, the appellant and other parties involved in the appeal process have adequate time to review documents, coordinate meeting arrangements, prepare and distribute applicable notifications and related documents regarding the appeal.

#### **Section 7-191 (a)1. (E),(F), (G) & (J)**

**(E) Estimate of Value of Services** – This section is being repealed, in part, to more clearly define the negotiation process for establishing the hourly billable rates and selection of firms for provision of contract services.

**(F) Fee Negotiation with Firms** – This section is being amended to more clearly define the negotiation process for establishing hourly billable rates, timeframes for response, and selection of firms for retainer contract services. The amended provisions also stipulate requirements for the contract provisions as to time and monetary limitations. This amended language defines current and future contracting procedures of the Office.

**(G) Services Negotiations with Firms** - This section is being amended to more clearly define the negotiation process for awarding contracts or assignments. The amended language stipulates the number

of opportunities to respond, timeframes for response and the Office's role in selecting a firm for award of contracts or assignments. This amended language defines current and future contracting procedures of the Office.

**(J) Contracting in Phases-** This section is being amended to add clarifying language.

**Section 7-200 (a) (1) & (2)** makes an editorial change.

**Section 7-200 (a) (3)** refers to Section 7-204(c)1 to identify the areas of construction specialty that a Class "C" Hospital Inspector may inspect for a hospital project.

**Section 7-203** is amended to name the form for verification of citizenship and refer to the new section where requirements for verification of citizenship will be located. Editorial change in paragraph (b).

**Section 7-204 (c)** expands the experience necessary to qualify for a Class "C" Hospital Inspector exam by including experience as a representative in technical inspection for a local fire authority, testing lab and specialty contractor. In addition, nationally recognized organizations test and issue certification in various construction inspection specialties. The certifications listed in this section are known to test the technical knowledge and skills required to inspect hospital construction projects.

**Section 7-204(d)** Requirements for verification of citizenship for hospital inspector certification applicants are being relocated to the end of the section for clarity.

**Section 7-205** is being repealed because the requirement is outdated. When the regulations for the Hospital Inspector Certification Program were adopted in 1997, Section 7-205 provided language to allow existing hospital inspectors to maintain their current certification for three years. Existing inspectors were given this three-year period within which to "recertify" under the new certification program regulations. Without this recertification their original certification would expire. This "grandfathering" period has expired, therefore, Section 7-205 is no longer necessary.

**Section 7-207(b)** identifies the areas of knowledge and abilities to be tested in a Class "A", "B" or "C" exam. It also specifies that for Class "C" inspector candidates, the inspection certification of an exam candidate may be substituted for the technical portion of the exam.

**Section 7-207(c)** this subsection applies to only the Class "A" and "B" hospital inspector exam. Candidates for these exams must have a passing score in all applicable sections of the exam. This is not applicable to Class "C" exam.

**Section 7-207(d)** is added to specifically addresses the Class "C" exam. This exam does not contain more than one section therefore the candidate must obtain an overall passing score.

**Section 7-210, exception 2** is being deleted, because it is outdated and no longer needed.

**Section 7-212(b)(2)** is editorially amended so that the requirement will be applicable to certification in areas of construction for all three hospital inspector Classes.

**Section 7-212(c)** is amended to repeal outdated and unnecessary language.

**Section 7-216** is added. Requirements for verification of citizenship of hospital inspector candidates are relocated to this section.

**Section 7-2106 (c) (1)** is being amended for clarity and consistency with other OSHPD fee requirements in Title 24, Part 1.

**Section 7-2106 (c) (6)** is being repealed because the fee refund requirements under the new Section 7-2107 will replace this language.

**Section 7-2107** is being adopted to make specific the requirements of Health and Safety Code Section 129785. This statute requires that the Office identify in regulation the circumstances under which the Office will issue a refund for fees paid for plan review and field observation. This new Section 7-2107 applies to

refunds for projects submitted to the Office regarding the types of clinic facilities, as identified in Section 7-2100 (a) (1), (2), (3) and (4). Specifically, these clinics are: (1) licensed surgical clinic, (2) licensed chronic dialysis clinic, (3) a surgical or chronic dialysis clinic which is a freestanding building but is under a hospital license, and (4) a freestanding building which provides outpatient clinical services, other than surgical or chronic dialysis, and is under a hospital license.

Clinic construction projects, in most cases, are submitted to the local building jurisdiction which will provide plan review, inspection and certification that the clinic construction project meets the provisions of Title 24, California Building Standards Code. However, in the circumstances where the local building jurisdiction will not provide these services for clinics identified in 7-2100 (a) (1), (2) or (3), the Office may agree to provide plan review and certification and will charge a fee for actual cost of the services. If the fees paid for a clinic project submitted to the Office exceed 5% of the actual cost of the services, a fee refund will be issued pursuant to new Section 7-2107(b). If the clinic project is withdrawn by the applicant, a refund of the unexpended fee amount will be issued as described in new Section 7-2107 (c).

In some cases, as described in Section 7-2104, the hospital governing authority may request that the Office perform plan review and building inspection for those outpatient clinics under a hospital license, which are identified in 7-2100 (a) (3) or (4). If the Office accepts the request, then the applicant will be charged a fee pursuant to Section 7-133 (a) (1), which is calculated at 1.64% of the estimated construction cost for the project. If fees paid, pursuant to 7-133 (a) (1), for a clinic project exceed 5% of the estimated construction cost a refund for the excess portion paid will be issued pursuant to the applicable requirements of new Section 7-134. If the clinic project is withdrawn the refund will be calculated pursuant to Section 7-133. These refund provisions will make specific the requirements of Health and Safety Code Section 129785.

## **MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The Office of Statewide Health Planning and Development has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

## **OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S).** (Government Code Section 11346.9(a)(3))

### **Comment #1:**

Mr. Jack Ivers, IRJ Engineers, Inc.

Mr. Ivers submitted written comments on code change proposal OSHPD 1/04, Items 1-8, 1-9, 1-10 and 1-11 regarding the appeals procedures for the Hospital Building Safety Board (HBSB). He recommends that these items be disapproved based on Nine-point Criteria #4. He is concerned that the proposed code changes will increase the allowable time for completing the HBSB appeals process and discourage appeals.

### **Response:**

Mr. Ivers commented on the proposed amendments that would change the term "days" to "business days". He interprets the term "days" in the existing regulations to mean "calendar days" and he comments that the proposed amendments will increase the timeframes for accomplishing the HBSB appeals process. The Office of Statewide Health Planning and Development (OSHPD) proposed the amendments to Title 24, Part 1, Sections 7-161, 7-163, 7-165 and 7-171 to clarify that the timeframes are measured in terms of "business days", not "calendar days". It has always been OSHPD's and HBSB's interpretation of the regulations that "days" means "business days". The intent of the amendment is not to increase the number of days for HBSB's appeal procedures but to clarify our interpretation. Since the OSHPD, HBSB and other parties that may be involved in the appeals process do not work on weekend days it is reasonable to calculate the procedural timeframes in terms of "business days". The proposed amendment only reflects what is already being practiced by the OSHPD/HBSB; this amendment alone will not increase the maximum allowable time for completion of appeal process.

There are some additional proposed amendments, however, that will increase the maximum allowable days specifically for notification of a hearing. These proposed amendments will allow the Office an additional five days (business days) for notification of an informal conference or formal hearing. The additional time is necessary to allow OSHPD/HBSB staff sufficient time to coordinate with all appropriate parties, and to

complete the numerous tasks involved in scheduling and preparing for these meetings. The staff are responsible for contacting and coordinating with all of the participants involved in the appeal, such as: the appellant, architects, engineers, consultants, contractors, legal counsel, OSHPD representatives (i.e. technical staff, manager, legal counsel, Deputy Director), and HBSB members to determine the date/time/location for a hearing. They must make all arrangements for reserving a suitable facility that is in a location mutually acceptable to the parties involved, that can accommodate all of the participants, that is accessible to persons with disabilities and has the necessary equipment. These factors often limit the selection of available and acceptable facilities making it necessary to pursue alternative arrangements. Additionally, all pertinent documents must be collected by staff, reproduced, assembled, packaged and distributed to all parties within this timeframe. Considering the nature of these tasks and the number of parties involved in the appeal, staff can often be confronted with problems outside of their control. The Office's years of experience with the appeals process, indicates that the existing notification period is insufficient and an additional five days would allow a more reasonable maximum allowable timeframe for this step in the appeals process.

There are proposed amendments will also increase the timeframe by which the Office will have to hold an informal conference. The Office will have 25 business days from receipt of a request for an informal conference, instead of 20, days. The additional five days will provide all parties involved more time to review documents and prepare for the hearing.

The OSHPD does not agree with the commenter and will not be amending or withdrawing the proposed express terms for OSHPD 01/04, Items 1-8, 1-9, 1-10 and 1-1. The proposed amendments will clarify existing regulations for the HBSB appeals process and the changes to aforementioned timeframes, will help avoid future extensions to the appeals process.

**Comment #2:**

Kurt A. Schaefer, Deputy Director  
Office of Statewide Health Planning

Mr. Schaefer recommended that OSHPD 1/04, Item 1-15 be "approve as amended" and suggested a nonsubstantive change Part 1, Section 7-204 (c) regarding the minimum qualifications for a Class "C" Hospital Inspector Exam. The IAPMO certification for a "Certified Plumbing Inspector" and "Certified Mechanical Inspector" does not include "levels" of certification as indicated in the proposal. The suggested amendment would delete the term "Level III" at the end of both of these inspector certifications titles.

**Response:**

The Office agrees with the comment and has amended the final express terms for Part 1, Section 7-204(c) (1) to delete the term "Level III".

**DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS**

The Office of Statewide Health Planning and Development has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

The proposed amendments are intended to clarify existing regulations, to implement statutory requirements and to repeal outdated regulations.

**REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES:** (Government Code Section 11346.9(a)(5))

There were no proposed alternatives. Additionally, the proposed regulations will not have an adverse economic impact on small businesses.

**COMMENTS MADE BY THE OFFICE OF SMALL BUSINESS ADVOCATE**

(Government Code Section 11347.6)

The OSHPD did not receive any comments from the Office of Small Business Advocate.

**COMMENTS MADE BY THE TRADE AND COMMERCE AGENCY**

(Government Code Section 11347.6)

The OSHPD did not receive any comments from the Trade and Commerce Agency.